No. 82-345

IN THE

Supreme Court of the United States

October Term, 1982

BROTHERHOOD OF TEAMSTERS & AUTO TRUCK DRIVERS, LOCAL 70,
Petitioner,
vs.
CALIFORNIA TRUCKING ASSOCIATION, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

GEORGE J. TICHY, II, Esq.
Counsel of Record
RICHARD H. HARRIS, Esq.
MICHAEL B. HARGOLIS, Esq.
LITTLER, MENDELSON, FASTIFF & TICHY
A Professional Corporation
650 California Street, 20th Floor
San Francisco, CA 94108
(415) 433-1940
Attorneys for Respondents

Wilkie & Farr, Inc., Law Printers, Los Angeles, (213) 624-0561

QUESTIONS PRESENTED

A. Are any "special and important reasons" for granting a writ of certiorari within the meaning of this Court's Rule 17 presented by the Ninth Circuit Court of Appeals' holding that there was no clear error in the District Court's rejection of Petitioner's defense that Respondents had failed to exhaust mandatory contractual dispute-resolution procedures, where the District Court's decision was based on Petitioner's repudiation of the collective bargaining agreement containing those procedures and where the Petitioner's repudiating conduct occurred before the District Court?

B. Are any "special and important reasons" for certiorari presented by the Ninth Circuit Court of Appeals' holding that there was no clear error in the District Court's finding that Petitioner's strike violated the applicable collective bargaining agreement?

C. Are any "special and important reasons" for certiorari presented by the Ninth Circuit Court of Appeals' holding that there was no clear error in the District Court's finding that Petitioner is liable for substantial damages that occurred when Respondents' employees outside of Petitioner's bargaining unit respected picket lines established by Petitioner in furtherance of its strike, where the District Court concluded that said damages were proximately caused by Petitioner's contract violation and were reasonably foreseeable?

TABLE OF CONTENTS

	Page
Questions Presented	i
Statement of the Case	1
Summary of Argument	8
Argument	12
A. The Courts Below Correctly Reached the Merits of the Action	12
B. The Courts Below Correctly Held that Local 70's Strike Violated the Contract	16
C. The Courts Below Assessed Only Damages that Were Proximately and Foreseeably Caused by Local 70's Strike	23
Conclusion	25
Appendix. Respondents' Disclosure of Corporate Parents, Non-Wholly Owned Subsidiaries, and Affiliates Pursuant to United States Supreme Court Rule 28.1	App. p. 1

TABLE OF AUTHORITIES

Cases	Page
Automobile Transport, Inc. v. Ferdnance, 420 F.Supp. 75 (E.D. Mich. 1976)	21
Beriault v. Local 40, Super Cargoes & Checkers, 501 F.2d 258 (9th Cir. 1974)	15
Best Cranes, Inc. v. International Union of Operating Engineers, Local 139, 93 L.R.R.M. 2994 (E.D. Wisc. 1976)	21
Boys Markets, Inc. v. Retail Clerks Union Local 770, 398 U.S. 235 (1970)	19
Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 v. NLRB, 414 U.S. 821 (1973)	5
Chauffeurs, Teamsters and Helpers Local Union No. 795 v. Yellow Transit Freight Lines, 370 U.S. 711 (1962)	19
Coordinating Committee Steel Companies v. United Steelworkers, 436 F. Supp. 208 (W.D. Pa. 1977)	21
Delaware Coca-Cola Bottling Co. v. General Teamster Local Union 326, 624 F.2d 1182 (3d Cir. 1980)	24
Eazor Express, Inc. v. International Brotherhood of Teamsters, 520 F.2d 951 (3d Cir. 1975), cert. denied, 424 U.S. 935 (1976)	24
Emery Air Freight Corp. v. Local Union 295, 449 F.2d 586 (2d Cir. 1971), cert. denied, 405 U.S. 1066 (1972)	20
E.T. Simonds Construction Co. v. Local 1330 of International Hod Carriers, 315 F.2d 291 (7th Cir. 1963)	15
General Drivers, Local Union No. 89 v. Riss and Co., 372 U.S. 517 (1963)	19
Hayes v. New England Millwork Distributors, Inc., 602 F.2d 15 (1st Cir. 1979)	15

Page

NLRB v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, 470 F.2d 509 (9th Cir. 1972) ... 5
NLRB v. Southern California Edison Co., 646 F.2d 1352 (9th Cir. 1981) 24
Rabalais v. Dresser Industries, Inc., 566 F.2d 518 (5th Cir. 1978) 15
Reid Burton Construction, Inc. v. Carpenters District Council, 535 F.2d 598 (10th Cir.), cert. denied, 429 U.S. 907 (1976) 14, 15
Rivera v. Sea Land of Puerto Rico, Inc., 418 F.2d 725 (1st Cir. 1969) 16
Smith v. Pittsburgh Gage and Supply Co., 464 F.2d 870 (3d Cir. 1972) 15
Teamsters Local No. 70 (California Trucking Association) 194 N.L.R.B. 674 (1972) 4
Teamsters Local No. 70 (Granny Goose Foods), 195 N.L.R.B. 454 (1972), enf'd, No. 72-1756 (9th Cir. 1972) 5
Teamsters Local 174 v. Lucas Flour Co., 369 U.S. 95 (1962) 10, 17, 18, 19, 20, 21
United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) 20
Vaca v. Sipes, 386 U.S. 171 (1967) 15

Rules

United States Supreme Court Rules, Rule 17 ..... i, 9
United States Supreme Court Rules, Rule 28.1 1

Statutes

Labor-Management Relations Act, Sec. 301 (29 U.S.C. § 185) 9, 16
Norris-LaGuardia Act (29 U.S.C. §§ 101-115) 19

No. 82-363

IN THE

Supreme Court of the United States

October Term, 1982

BROTHERHOOD OF TEAMSTERS & AUTO TRUCK DRIVERS, LOCAL 70,

Petitioner,

vs.

CALIFORNIA TRUCKING ASSOCIATION, *et al.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Resp lents[1] (the Employers) seek in this action to recoup damages suffered in consequence of a strike mounted by Petitioner (the Union or Local 70) in the spring of 1970 in violation of a collective bargaining agreement in effect between the parties.

The Union is the collective bargaining representative of truck drivers employed by the Employers. On April 1, 1967, the parties, members of a multiple-party bargaining group,

[1]Respondents, Plaintiffs below, include twenty-seven motor carriers engaged in hauling general commodities and their collective bargaining representative (collectively referred to as the trucking employers), and two companies engaged in the manufacture and distribution of snack foods (the snack-food employers). Pursuant to United States Supreme Court Rule 28.1, Respondents make the necessary disclosures about their corporate status and affiliates in the Appendix hereto.

entered into a collective bargaining agreement governing the terms and conditions of employment of the covered drivers. That contract consisted of two documents: (1) the "National Master Freight Agreement" (the Master Agreement) and (2) the "Local 70 Pickup and Delivery Supplemental Agreement", also known as the "Joint Council 7 Local Pickup and Delivery Supplemental Agreement" (the Supplemental Agreement). As specified in Article 37 of the Master Agreement, that contract was to last at least from April 1, 1967 through March 31, 1970,[2] and would automatically continue from year to year unless either party gave timely notice that it wished to cancel. If no such notice were served, but the parties desired "to continue said Agreement but also . . . to negotiate changes or revisions", either party might serve notice of its desire to negotiate amendments.

Neither party served timely notice of intent to cancel the 1967-1970 contract. Instead, Local 70, through its bargaining representative, the International Brotherhood of Teamsters, served timely notice of its intent to continue the contract and negotiate amendments thereto pursuant to Article 37, Section 2 of the Master Agreement.

Negotiations on the amendments began in early 1970. The only evidence contained in the record about the progress of negotiations is that on April 2, 1970, the bargaining representatives of the parties agreed on all terms of the amendments to the contract without ever having reached impasse.[3] The amendments became effective when ratified

---

[2]Accordingly, this collective bargaining agreement will be identified as the 1967-1970 contract.

[3]To the extent that the Union means anything else by its statement, at pp. 4-5 of its Petition for Writ of Certiorari (Petition), that "[i]t is undisputed that there was a failure to agree upon any revisions until April 2, 1970, when a 'tentative settlement' was agreed upon", the Union misrepresents the record. Indeed, there is no record evidence that any bargaining party ever made any proposal that was at any time rejected by its counterpart across the bargaining table.

by the full membership of the International Brotherhood of Teamsters on May 18, 1970.[4]

On April 1, 1970, while collective bargaining was still ongoing, the Union commenced strike activity against roughly half of the trucking employers.[5] Local 70's agents appeared at the Employers' terminals, instructed employees who were members of the Union to leave their jobs, and established picket lines. On the morning of April 3, *after* the bargaining representatives had reached agreement, Local 70 expanded its strike to include all of the trucking employers. Later that day, Local 70's membership ratified the strike by an overwhelming vote. Also on April 3, the trucking employers brought a breach-of-contract action in state court, pursuant to which a state court injunction issued. When Teamsters Joint Council 7 passed a motion on April 7 requiring Local 70 to instruct its members to return to work, the Union complied, and most striking employees returned to work on April 8.

Local 70's strike activity was motivated by its dissatisfaction with the multiple-party negotiations on the amendments to the 1967-1970 contract and its desire to break away from the multi-union bargaining group.[6] The same reasons

---

[4]The 1967-1970 contract as modified by these agreed-upon amendments will be identified as the 1970-1973 contract.

[5]At p. 5 of its Petition, Local 70 disingenuously states that "[a]s of midnight, March 31, 1970, there was no agreed-upon collective bargaining agreement, and Local 70 took strike action . . . ." Unless the Union means only that the parties had not completed their negotiations on the amendments to the 1967-1970 contract, the Union misrepresents the record. As stated above, Article 37 of the 1967-1970 Master Agreement gave Local 70 two choices regarding the 1967-1970 contract's duration: either give notice of intent to cancel, which the Union did not do, or give notice of intent to continue the existing contract and seek amendments, which the Union did do. Consequently, the courts below held that the 1967-1970 contract did continue in force from midnight, March 31, 1970, through May 17, 1970.

[6]At p. 5 of its Petition, the Union states that "[t]he court below found that Local 70 initiated the strike action at a time when no agreement was reached . . . ." The fact is that the courts below ruled that the 1967-1970 contract was in effect when Local 70 struck and remained in effect through May 17, 1970. *See* note 5, *supra*.

led to the resumption of Local 70's strike activities against the trucking employers in early May, activities which continued throughout the month. On May 14 and 15, 1970, the Union extended its strike to the snack-food employers, who promptly filed a state court action for injunctive and monetary relief. The lawsuits of both the trucking employers and the snack-food employers were removed to the United States District Court for the Northern District of California, where they were consolidated.

The impact of Local 70's April and May strike was such that the Employers were unable to engage in revenue-generating operations while the strike continued. The Employers have proceeded along various legal avenues to ameliorate the adverse effects of Local 70's strike, which the Employers contend violated both the federal labor laws and the parties' collective bargaining agreement. The Union has consistently litigated each proceeding to the hilt and exhausted its appeals, but it has not succeeded in persuading any tribunal that its strike was activity permitted under either law or contract.

The lawfulness of the strike, which the trucking employers charged constituted an unfair labor practice, was litigated before the National Labor Relations Board (NLRB) in October 1970 and January and February 1971. Throughout the hearings conducted by the NLRB, the Union denied being bound by the 1970-1973 amendments to the 1967-1970 contract. The NLRB ultimately concluded that Local 70 had violated the National Labor Relations Act by striking to force the Employers out of the established multi-employer bargaining unit.[7]

When the Union refused to comply with the NLRB's decision and order, the NLRB petitioned the Ninth Circuit Court of Appeals for enforcement. The Court of Appeals

---

[7]*Teamsters Local No. 70 (California Trucking Association)*, 194 N.L.R.B. 674 (1972).

granted enforcement,[8] and this Court denied certiorari.[9] Finally, on November 21, 1973, approximately five months after the 1970-1973 contract had expired, Local 70 signed a notice agreeing to honor that contract.[10]

For almost three years, the Union had maintained in the proceedings before both the NLRB and the District Court that it was not bound to any collective bargaining agreement during the period of the strike. However, once the Ninth Circuit Court of Appeals enforced the NLRB's decision and the Union could no longer deny being bound by the 1970-1973 contract, Local 70, attempting to turn its newly accepted contractual obligations to its advantage, changed its tactics and began arguing to the District Court that the Employers were required to exhaust mandatory grievance procedures set forth in the very contract that for years the Union had refused to acknowledge. Nevertheless, the Union continued to deny that it was bound by the provisions of the 1967-1970 contract during the period of the strike. Moreover, Local 70 chose not to move for a stay of the proceedings, but instead contented itself with demanding dismissal of the action on the ground that the damage claims had to be arbitrated.

When it came time finally to decide the case, the District Court faced, as a threshold question to the merits of the Employers' damage claims for breach of contract, the issue of whether there was any substance to the Union's belated non-exhaustion defense. The District Court ruled against Local 70 on the ground that the Union was estopped from

---

[8] *NLRB v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70*, 470 F.2d 509 (9th Cir. 1972).

[9] *Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70 v. NLRB*, 414 U.S. 821 (1973).

[10] A similar scenario was enacted pursuant to unfair labor practice charges filed by the snack-food employers. *See Teamsters Local No. 70 (Granny Goose Foods)*, 195 N.L.R.B. 454 (1972), *enf'd*, No. 72-1756 (9th Cir. 1972).

asserting its defense by virtue of its repeated repudiation of the contract in its actions before the District Court.

The record before the District Court established that, for too many years, the Union had proceeded on the premises that no collective bargaining agreement was in force during the strike and that the District Court was the proper forum for the resolution of the Employers' claims. Local 70, in separate answers to the trucking employers' action and the snack-food employers' action, had denied that it was party to the collective bargaining agreements allegedly breached. The answer to the trucking employers' complaint specifically alleged, as an affirmative defense, that the complaint showed no breach of contract because the collective bargaining agreement expired on March 31, 1970. Consistent with this allegation, Local 70 persistently maintained that it was not bound to the 1967-1970 contract after March 31, 1970 and that the Employers could not, and did not, prove the existence of *any* contract during the period April 1 through May 17, 1970.

In addition to denying it was bound to any collective bargaining agreement during the strike, Local 70 conducted its defense in a manner completely inconsistent with a genuine desire to have the dispute processed through contractual procedures. For one thing, the Union substantially invoked the District Court's jurisdiction by filing various motions on the merits without indicating in any way that it wished to reserve a right to insist upon arbitration. For another thing, Local 70 expressly asserted that it desired a trial in the District Court.[11]

Indeed, even when Local 70 finally did begin to claim that the Employers had failed to exhaust mandatory con-

---

[11]The Union did so both in an offensive posture, where in one of its motions it expressed a preference for "a speedy trial before [the District] Court", and in a defensive posture, where in an opposition to a summary judgment motion it declared that granting summary judgment "would deprive [the Union] of the right to a jury trial".

tractual procedures, it still fell short of expressing a genuine desire to arbitrate and never demanded arbitration. The Union first suggested its non-exhaustion defense on January 18, 1973, in opposition to a summary judgment motion. It made no cross motion to compel arbitration. Nearly a year went by before Local 70 made any motion at all based on its new defense. Then, in the late fall of 1973, in May, August, and December of 1974, and again in April 1975, the Union moved for summary judgment on the ground that the District Court could not take jurisdiction of the damage claims because various issues had not first been submitted to the contractual grievance procedures. While the Union expressed its desire to have those claims dismissed, it failed to indicate that it wished to arbitrate, and at no time did it move the District Court to stay the proceedings pending an arbitral determination of the validity of the non-exhaustion defense.

In fact, during the nearly seven years of proceedings before the District Court, Local 70 made only one request for submission of any issue to the contractual grievance procedures, and that on the day trial was originally scheduled to commence, approximately four and one-half years after the filing of the lawsuit. At that time, the Union sought a stay of the court proceedings pending submission to the contractual procedures of the single issue of which collective bargaining agreement covered the dispute. And even then, the Union's argument in favor of its motion suggested that it preferred a court trial on the remaining issues.[12]

---

[12]The Court of Appeals noted that Local 70, in support of its motion for a stay, had argued as follows:

> If the National Grievance Committee determines that the claims are governed by the 1970-1973 agreement through and including April 1, 1970, then this Court can proceed based upon a suit which alleges a breach of that collective bargaining agreement. If the National Grievance Committee determines that it has no jurisdiction over claims except those occurring on or after May 18, 1970, then this Court can safely proceed with a suit based upon the 1967-1970 National Master Freight Agreement. In the

(footnote continued on following page)

With this record of repudiation, the District Court ruled that Local 70 was estopped from contending that the Employers could not sue before they grieved their damage claims. The District Court then proceeded to adjudicate the merits of the Employers' claims, ultimately holding that the Union's strike violated the 1967-1970 contract and that the Union was liable to the Employers for approximately three million dollars in damages.

After exhausting various post-trial remedies, Local 70 appealed the judgment to the United States Court of Appeals for the Ninth Circuit. The Court of Appeals affirmed,[13] finding no clear error in the District Court's determination that Local 70's actions in the lawsuit constituted a repudiation of the applicable collective bargaining agreement and that, therefore, the Union had waived and was estopped from raising any non-exhaustion argument. The Court of Appeals also found no clear error in the District Court's findings that Local 70's strike breached the contract and that the Employers had suffered certain damages thereby.

SUMMARY OF ARGUMENT

Petitioner has presented no "special and important reasons" for certiorari. In its Petition, the Union makes three basic arguments: (1) this Court should decide that the arbitrator, not a court, must determine the arbitrability of a grievance where that question involves an interpretation of a labor agreement; (2) the District Court erred in holding

---

> alternative, if the National Grievance Committee deadlocks over these issues then under either the 1967-1970 or the 1970-1973 agreement, this Court can safely proceed, with the intention of the parties contained in both agreements having been clearly effectuated . . . .

Petition for Writ of Certiorari, Appendix A at 29 n.9 (emphasis deleted). Further references to the appendices to the Petition will be made in the form "Pet. App. ___ at ___."

[13]The Court of Appeals remanded as to certain calculations of a portion of the damages; as to all other points, it affirmed.

that the Union's strike breached the collective bargaining agreement; and (3) the District Court erred in assessing certain damages. None of these arguments satisfies the requirements of this Court's Rule 17 for granting a writ of certiorari.

The Union contends that federal courts disagree about who is to determine the arbitrability of disputes between contracting parties when arbitrability turns on interpretation of the contract, and it argues further that the decisions of the courts below fall on the wrong side of the split of authority. However, regardless of whether such a conflict exists, it is irrelevant to this case. The Court of Appeals expressly ruled that the District Court was correct to find that Local 70's conduct before the District Court constituted a repudiation of the applicable collective bargaining agreement, including the grievance procedures contained therein. Having repudiated the contract, Petitioner is estopped from contending that *any* issue in this case — whether of arbitrability itself or of the merits of the underlying dispute — must have been submitted to the contract's grievance procedures before the Employers could bring suit.

The Union does not challenge the courts' right to determine whether a repudiation occurred. Instead, Local 70 argues that exhaustion of contractual grievance procedures is a jurisdictional requirement and that, therefore, the Union cannot be estopped from raising it as a defense, even though belatedly and inconsistently. However, Local 70 is wrong to contend that arbitrability is not a waivable defense. Subject-matter jurisdiction over this action is given by Congress to the courts in Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, and nothing in a private contract can alter that. When federal courts decline to hear disputes that the parties had agreed would be subject to the mandatory grievance procedures of collective bargaining agreements, they do so to honor the national policy favoring

labor arbitration, not because the private agreements strip them of congressionally bestowed jurisdictional power.

The Union's second basic contention is that, for three reasons, the lower courts erred in holding that Local 70's strike breached the applicable collective bargaining agreement. The focus of this argument is on this Court's *Lucas Flour* decision,[14] which held that a collective bargaining agreement that contains a mandatory arbitration clause will be deemed also to contain an implied no-strike clause of equal breadth.

The Union argues that the lower courts' recognition of such an implied no-strike provision was erroneous because the applicable contract provides for dispute resolution by a joint labor-management committee rather than by an arbitrator. Even apart from the anomaly of the Union's arguing that the contractual procedures do not qualify as arbitration for *Lucas Flour* purposes immediately after arguing that those same procedures do qualify as arbitration for purposes of divesting the courts of jurisdiction, Local 70's position lacks merit. A mandatory grievance procedure such as is contained in the contract in this case is exactly the sort that implies a no-strike clause under *Lucas Flour*.

The Union also argues that no implied no-strike clause exists because the strike was not over a dispute that could be submitted to the contractual grievance procedures. But the Supplemental Agreement defines the scope of the grievance procedures extremely broadly to include "any grievance or controversy affecting the mutual relations of the Employer and the Union". Local 70 is surely not entitled to certiorari on the claim that the disputes that led to its strike, disputes over the progress of the national negotiations and the Union's demand for separate bargaining with each of the Employers, could not reasonably be held to have

---

[14] *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95 (1962).

"affect[ed] the mutual relations" of the parties within the meaning of the contract.

Local 70's last challenge to the courts' finding of breach is that the lower courts' decisions improperly ignored a final and binding decision of the National Grievance Committee interpreting the portion of the contract that allows a strike where the negotiating parties "fail to agree" on revisions to the contract. The courts interpreted "fail to agree" to mean "impasse", but the Committee decision, Local 70 claims, says that strikes are allowed at any time before the parties arrive at an enforceable agreement to amend. Aside from the paradox created by the Union's relying on a purportedly final and binding grievance decision immediately after contending the grievance procedure differed from arbitration "because of its lack of finality", Local 70's contention lacks merit for several reasons. The decision was not a part of the record below, and the purportedly decisive interpretation of the "fail to agree" language simply does not say what Local 70 claims: on its face, it relates not at all to the 1967-1970 contract; on its face, it simply cannot be said to construe the phrase "fail to agree"; and, by its own terms, it is limited to the facts of the case presented to the grievance committee.

The Union's third and final proffered ground for the granting of a writ of certiorari is the contention that the lower courts erred in assessing certain damages. Specifically, Local 70 objects to being held responsible for damages occurring when employees who were not its members refused to cross the picket lines established by Local 70 in furtherance of the strike at the Employers' facilities. The Union tries to pique this Court's interest by characterizing the lower courts' rulings as examples of the inconsistent judicial treatment of sympathy-strike damages. But the Union's contention simply mistates the facts, for it is the consequences of the conduct of Local 70's pickets, not of the sympathy strikers, which is at issue. The lower courts

found that the refusal of other employees to cross Local 70's picket lines was foreseeably and proximately caused by Local 70's strike. Relying on accepted standards for determining causation, the lower courts correctly held the Union accountable for its conduct.

ARGUMENT

A. The Courts Below Correctly Reached the Merits of the Action.

The Ninth Circuit Court of Appeals found no clear error in the District Court's decision to reach the merits of the Employers' damage claims despite Local 70's defense that the Employers had not exhausted mandatory contractual grievance procedures. The basis for the Court of Appeals' decision was that Local 70, by its conduct before the District Court, repudiated its contract status and thus was estopped from relying on the contract's arbitration provisions as a defense to the Employers' damage action arising out of the 1967-1970 contract. Pet. App. A at 31.

Local 70's first attempt to state "special and important reasons" for this Court's review challenges the propriety of the lower courts' reaching the merits. But rather than contesting the repudiation determination straight out, Local 70 introduces a red herring. The Union argues that the courts below improperly reserved to themselves the determination of the arbitrability issue raised by Local 70's defense of non-exhaustion of contractual remedies, rather than requiring that issue to be submitted to the contractual grievance procedure. Petition at 6-12. Local 70 acknowledges that the accepted rule is that arbitrability is an issue for the courts to decide, *id.* at 6, 8 n.7, but nevertheless attempts to interest this Court in its argument to the contrary by stating that the rule "has led to conflicting results in the federal court sys-

tem", *id.* at 6. Local 70 goes on to say that the problem is that when the question of arbitrability itself turns on the interpretation of the applicable collective bargaining agreement "the courts have applied contradictory methodology", with the result that threshold questions of contractual interpretation have variously been determined by courts or remanded to arbitrators. *Id.* at 6-7. Local 70 concludes that "where the question of arbitrability is *also* of contractual interpretation . . . it should be normally decided through the arbitration procedure, contrary to the ruling of the court below." *Id.* at 7-8.[15]

This is all very interesting, but it has absolutely no bearing on this case. The Court of Appeals did not reach the merits by deciding that it, rather than an arbitrator, should determine whether the collective bargaining agreement required grievance of the Employers' damage claims as a precondition to suit. The Court of Appeals expressly did not decide whether there was any merit to Local 70's contention that the contract contained an exhaustion requirement. Pet. App. A at 32 & n.10. The Court of Appeals did not get to the questions Local 70 points to here because it ruled that the District Court's finding of a repudiation of the contract by Local 70 was not clearly erroneous. Local 70's repudiation estopped it from raising the non-exhaustion defense. Accordingly, Local 70's discussion of whether court or arbi-

---

[15]Local 70 does not directly face up to the ramifications of its position. The fact of the matter is that arbitrability *always* involves interpretation of the contract, inasmuch as it is the contract which defines arbitrability and a court will necessarily have to decide what the contract says. Consequently, to adopt Local 70's proposed rule would be to overrule the hitherto accepted axiom that arbitrability is for the courts to decide. Because this issue is immaterial to the dispositive issue of repudiation, however, we do not address it in greater detail here.

trator should rule on the merits of that defense is simply beside the point.[16]

As is set forth more fully above,[17] for years while litigating in the District Court, Local 70 consistently denied that it was bound by any collective bargaining agreement during the strike, repeatedly indicated its desire to go to trial before the District Court, substantially invoked the District Court's process without reserving a right to demand arbitration, and failed to evince any genuine interest in having the dispute processed through the contractual grievance procedures. Accordingly, the District Court held, and the Court of Appeals agreed, that Local 70's actions in court constituted a complete repudiation of the applicable collective bargaining agreement and estopped Local 70 from raising any part of that agreement as a bar to the suit. *See Reid Burton Construction, Inc. v. Carpenters District Council*, 535 F.2d 598 (10th Cir.), *cert. denied*, 429 U.S. 907 (1976);

---

[16]At pp. 8-12 of its Petition, Local 70 argues that there are four aspects of this case as to which the courts below improperly decided to interpret the contract, rather than defer to the grievance procedures, due to the "confusion created in the federal courts" by "contradictory approaches" to issues of arbitrability that rest on contractual interpretation. Local 70 states that, in each instance, "the courts interpreted the contract and rejected petitioner's requests that the matter be treated through the parties' grievance procedure." Petition at 12. At the outset, we note that Local 70 made no such "requests"; in roughly seven years of litigating before the District Court, Local 70 made only one request that any issue be referred to the contractual grievance procedures, and that request was limited to a single, narrow issue. *See* text accompanying notes 11-12, *supra*. Even apart from that, Local 70 is wrong to challenge the lower courts' interpretations of the contract on the basis of the law of arbitrability. The lower courts rested their decisions to interpret the contract on Local 70's repudiation of its contract status, which estopped Local 70 from raising the issues of non-exhaustion and of arbitrability. Whether the four contractual interpretations with which Local 70 takes issue would properly be made by a court in the absence of such a repudiation is immaterial. To put all this into other words, the issue of repudiation is simply the issue of whether the Employers are party to any binding agreement to arbitrate in the first place, a question which Local 70 concedes is "fully reserved to the court." Petition at 8 n.7.

[17]*See* text accompanying notes 7-12, *supra*.

E.T. Simonds Construction Co. v. Local 1330 of International Hod Carriers, 315 F.2d 291 (7th Cir. 1963).

The Union does not dispute the authority of the courts to determine the issue of repudiation, but instead argues that its repudiation is irrelevant because non-exhaustion of contractual remedies is a non-waivable jurisdictional defect. Petition at 12-15.[18] Local 70 instructs this Court that it "is compelled to resolve the question of whether exhaustion of contractual remedies by an employer is jurisdictional or not". *Id.* at 15.

The Union's position is literally incredible. It is not surprising that Local 70 does not cite authority for its proposition, for this Court long ago established that a party's actions may constitute repudiation of a collective bargaining agreement and may thereby waive a non-exhaustion defense. *Vaca v. Sipes*, 386 U.S. 171, 185 (1967). The lower federal courts have uniformly seen fit to recognize that rule. *See, e.g., Hayes v. New England Millwork Distributors, Inc.*, 602 F.2d 15, 18 (1st Cir. 1979); *Rabalais v. Dresser Industries, Inc.*, 566 F.2d 518, 519-20 (5th Cir. 1978); *Reid Burton Construction, Inc. v. Carpenter District Council*, 535 F.2d 598 (10th Cir.), *cert. denied*, 429 U.S. 907 (1976); *Beriault v. Local 40, Super Cargoes & Checkers*, 501 F.2d 258, 262 (9th Cir. 1974); *Smith v. Pittsburgh Gage and Supply Co.*, 464 F.2d 870, 875 (3d Cir. 1972); *E.T. Simonds Construction Co. v. Local 1330 of International Hod Carriers*, 315 F.2d 291 (7th Cir. 1963).

---

[18]Local 70 also seems to argue that no repudiation occurred, but makes no effort to refute the dispositive facts. Local 70 attempts a little legerdemain by stating that the Court of Appeals was "dead wrong" to say that Local 70 had alleged it was not bound by the 1967-1970 contract and explaining that its position "was that, although bound by *that* agreement through March 31, 1970, the Union was not bound by the new agreement effective thereafter." *Id.* at 13. The malevolent misdirection is, of course, the March 31 date. The strike began on April 1. Local 70 consistently denied that it was bound by the 1967-1970 contract (or for that matter *any* collective bargaining agreement) *when it struck*, which is the only material time.

The reason for this rule is relatively simple. Subject-matter jurisdiction over an action for breach of a collective bargaining agreement is conferred by Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185. No private contract can affect that jurisdiction in any way. As the Court of Appeals for the First Circuit observed in *Rivera v. Sea Land of Puerto Rico, Inc.*, 418 F.2d 725 (1st Cir. 1969):

> [Arbitration] agreements . . . are not destructive of jurisdiction. They are, precisely, agreements, and as such may be pleaded as a personal defense. However, like any such right, they may be waived. . . . Plaintiffs' cases, to the effect that the court has no "jurisdiction" until agreed-on arbitration has been conducted, do not concern jurisdiction in the basic sense, but stand merely for the proposition that if either party seasonably claims his right to arbitrate, the agreement must be recognized.

Id. at 726.[19]

Accordingly, Local 70 has not presented any "special and important reasons" for reviewing the lower courts' decision to adjudicate the merits of the Employers' claims despite Local 70's belated defense of non-exhaustion of contractual remedies.

B. The Courts Below Correctly Held That Local 70's Strike Violated the Contract.

The Ninth Circuit Court of Appeals found no clear error in the District Court's ruling that Local 70's strike violated the 1967-1970 contract. The District Court held that the

---

[19]The First Circuit Court of Appeals' subsequent remarks are equally apposite here:

> Plaintiffs' suddenly discovered affection for arbitration came too late. They cannot proceed with an action until it proves unsuccessful, and then avoid the effect by pleading their own contractual breach in having brought it. Plaintiffs are seeking to play games with a court which the record shows has been more than patient with them.

Id.

strike violated both a no-strike clause created by operation of law, Pet. App. C at 27-30, and an express contractual ban on strikes during negotiations, Pet. App. C at 31-34. Local 70 challenges the finding of breach and claims the courts below committed three errors which this Court should correct.

First, Local 70 argues that the lower courts were wrong to find an implied no-strike clause in the contract under the doctrine of *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95 (1962). Local 70 contends that *Lucas Flour* creates a no-strike clause by operation of law only where a collective bargaining agreement provides for final and binding arbitration. Petition at 15. In the contract at bar, it claims, the grievance procedures specifically exclude arbitration and do not necessarily provide for finality.

The Court of Appeals correctly resolved the issue against Local 70 on the ground that, so long as the parties expressed an intention to settle their disputes through arbitration, the appellation given to the procedure is immaterial. Pet. App. A at 36-38. *Lucas Flour* held that, where there is a duty to submit the underlying dispute to final and binding arbitration, a strike violates the collective bargaining agreement. The only way in which Local 70 distinguishes the contractual procedures from conventional arbitration is by alleging an absence of finality in the former. Local 70 infers the purported lack of finality from the composition of the grievance committee, which consists of an equal number of management and labor representatives. Yet Local 70 concedes that, so long as the contractual grievance committee does not deadlock, the decision does have finality. Petition at 16 n.16.[20]

---

[20]If Local 70 means to say that, as a factual matter, deadlock occurs too frequently to leave the grievance procedures with the requisite degree of finality, its contention is unsupported by the record. Local 70 introduced no evidence on this issue. If Local 70 means to say that, as a matter of law, any grievance procedure that admits any possibility of no majority decision (because there is an even number of decision-makers) lacks finality, Local 70 is simply wrong. Indeed, this Court itself has more than once rendered final decisions when an even number of Justices participated.

Moreover, Local 70 itself equates the contractual procedures with arbitration and invokes the policy favoring arbitration in support of its defenses. *See* Petition at 6-12. Indeed, in its opening brief to the Court of Appeals below, Local 70 took pains to explain why the contract's grievance procedures *should* be equated with arbitration:

> Here, the collective bargaining agreements do not contain provisions for final and binding arbitration in the sense that a neutral outside party makes the final decision except in discharge cases. Instead, the contracts contain an elaborate grievance machinery culminating in the National Grievance Committee, composed of equal numbers of employer and union representatives. This process of joint labor-management committees has some elements of negotiation as well as arbitration. *If anything, broader deference should be given to such an interpretive process than to the system of entrusting disputes to an outside arbitrator, since the parties have designed this procedure in order to preserve the parties' intention to interpret and apply their own agreement, and to maintain uniform interpretations throughout the industry.* In furtherance of this system, the contract specifically excludes arbitration as to most disputes . . . and limits the impact of tribunal interpretations. . . .

Brief for Appellant at 17 n.13 (emphasis added).

Local 70's own characterization of the contractual procedures makes quite clear that they form precisely the sort of dispute-resolution system contemplated by *Lucas Flour*. Indeed, *Lucas Flour* itself read a no-strike clause into a contract that provided for resolution of disputes by a "Board of Arbitration" consisting of two members: one representing management, one labor.[21] 369 U.S. at 96. Arbitration is not

---

[21]The grievance clause in the *Lucas Flour* contract also provided that, if these two "arbitrators" could not agree, a third decision-maker would be selected. The possibility of deadlock over the identity of such a third arbitrator did not eliminate finality in this Court's eyes; the parties evidently intended that resolution of disputes would normally be accomplished by decision of the two-member panel.

a magic name; what is protected is the means chosen by the parties to resolve their disputes. So long as the grievance committee *can* render a final and binding decision, as Local 70 concedes, the grievance procedure qualifies as arbitration. *See General Drivers, Local Union No. 89 v. Riss and Co.*, 372 U.S. 517, 519 (1963).

Local 70 can hardly claim that the Court of Appeals committed some error meriting this Court's review merely by holding that the District Court was not clearly erroneous to find that the contractual procedures were the parties' "chosen instrument for the definitive settlement of grievances under the Agreement". *Id.* The Court of Appeals was entitled to rely on Local 70's own characterization of the procedures. This Court's observation in *Lucas Flour* itself is apt here as well: "[A] contrary view would be completely at odds with the basic policy of national labor legislation to promote the arbitral process as a substitute for economic warfare." 369 U.S. at 105.[22]

Local 70's second challenge to the finding of breach also rests on *Lucas Flour*. Local 70 correctly states that a no-strike clause is properly implied only to the same extent to which there is a duty to submit the underlying dispute to the mandatory grievance procedures. Local 70 identifies the disputes underlying the strike as being over new terms and

---

[22]Local 70 submits that whether the *Lucas Flour* doctrine extends to grievance procedures such as in the case at bar was acknowledged to be an open question in *Chauffeurs, Teamsters and Helpers Local Union No. 795 v. Yellow Transit Freight Lines*, 370 U.S. 711 (1962), and should now be resolved by this Court. Petition at 16. As demonstrated above, however, the question is not an open one under the facts of this case. In addition, the *Yellow Transit* decision does not do what Local 70 says it does. *Yellow Transit* was a *per curiam* decision, the entire text of which is as follows: "Reversed. Sinclair Refining Co. v. Atkinson, 370 U.S. 195, 8 L. Ed. 2d 440, 82 S. Ct. 328." Furthermore, *Yellow Transit* involved a request for injunction requiring application of an entirely distinct body of law concerning the Norris-LaGuardia Act, 29 U.S.C. §§ 101-115, not to mention that the case on which the reversal was based was itself later overruled by this Court in *Boys Markets, Inc. v. Retail Clerks Union Local 770*, 398 U.S. 235 (1970).

conditions of employment and Local 70's desire to break the Employers away from the multiple-party bargaining over amendments to the 1967-1970 contract. Local 70 claims that these disputes could not possibly be grievable and that the lower courts were wrong to hold to the contrary. Petition at 16-18. Local 70 adds that the Court of Appeals' ruling conflicts with decisions in one other court of appeals and three district courts and submits that this Court should clarify the *Lucas Flour* doctrine. *Id.* at 18 & n.18.

Local 70 is wrong on all counts. As it concedes, the grievance procedures covered not only questions of contractual interpretation but also "any grievance or controversy affecting the mutual relations of the Employer and the Union." *Id.* at 9.[23] The Court of Appeals found no clear error in the District Court's finding of a relevant implied no-strike clause because "the uncontested language of the relevant contract provisions is all-inclusive." Pet. App. A at 36. This factual determination presents no issue requiring review by this Court. *See United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960).

Local 70 blusters that "[n]othing would suggest that the Union *could* grieve its claim for higher wages and different benefits" and that the Court of Appeals' ruling is "preposterous", Petition at 17, but the contract language, including as grievable all disputes "affecting the mutual relations" of the parties, speaks for itself. The cases Local 70 claims conflict with the Court of Appeals' decision, Petition at 18 n.18, are easily distinguishable: either the employer conceded the strike's underlying dispute was not arbitrable[24] or the contract's language narrowly defined the

---

[23] At the cited portion of the Petition, Local 70 states that the "mutual relations" phrase represents coverage "*far broader* than that of the NMFA [Master Agreement] procedure" which provides for grievance only of questions of contractual interpretation. (Emphasis added.)

[24] *Emery Air Freight Corp. v. Local Union 295*, 449 F.2d 586, 591 (2d Cir. 1971), *cert. denied*, 405 U.S. 1066 (1972).

scope of the grievance procedure.[25] The Court of Appeals for the Ninth Circuit hardly committed an error so grievous as to warrant review in this Court by holding that the District Court properly found that a dispute over the Employers' right to participate in the national multiple-party bargaining could reasonably be thought to affect the mutual relations of the parties and therefore be subject to grievance.

The Union's final challenge to the finding of breach rests on a purportedly dispositive decision of the National Grievance Committee. Local 70 observes that, in the contractual section dealing with negotiations to amend the contract, the agreement provides that " '[t]he respective parties shall be permitted all legal or economic recourse to support their requests for revisions if the parties fail to agree thereon.' " Petition at 18. Local 70 objects to the lower courts' finding that this "fail to agree" language expressly prohibited a strike so long as the parties had not come to an impasse in their negotiations.[26] The National Grievance Committee, Local 70 claims, "construed precisely this provision to permit economic action without impasse." *Id.* at 19. Local 70 goes on to say that this Court should be interested because the question presented "is whether a court may totally dis-

---

[25]In *Automobile Transport, Inc. v. Ferdnance*, 420 F. Supp. 75 (E.D. Mich. 1976), the dispute lay between the strikers and their union and the arbitration clause contained "no provision for the arbitration of internal union disputes". *Id.* at 77. In *Coordinating Committee Steel Companies v. United Steelworkers*, 436 F. Supp. 208, 214 (W.D. Pa. 1977), and *Best Cranes, Inc. v. International Union of Operating Engineers, Local 139*, 93 L.R.R.M. 2994, 2996 (E.D. Wisc. 1976), the arbitration clauses were expressly limited to questions of contractual interpretation.

[26]Of course, Local 70's strike was in violation of the contract either if it breached an implied no-strike clause created by operation of law pursuant to *Lucas Flour, supra*, or if it violated the express limitation on strikes represented by the "fail to agree" language. In fact, as the District Court concluded, the strike breached both the express and the implied ban on strikes. *See* Pet. App. C at 27-34.

regard the parties' definitive understanding of a contract as expressed in a joint grievance committee decision." *Id.*[27]

Local 70 is, to borrow a phrase, dead wrong.[28] First, Local 70 did not make the grievance committee's decision part of the record before the District Court. Indeed, the Union did not even bother to bring this "definitive understanding" of the parties[29] to either court's attention until some three years after the grievance decision was rendered and only a week or so before oral argument to the Court of Appeals. Accordingly, the District Court's interpretation of the contract's "fail to agree" language was made in ignorance of the purportedly decisive grievance decision, not in "disregard" of it as the Union contends. *See id.* at 19.

Second, the grievance committee's decision just does not say what Local 70 claims. That decision, reproduced as Appendix H to Local 70's Petition, on its face reveals no basis for concluding that the controversy it resolves is in any material way similar to that which faced the courts below. The document says nothing about interpreting the 1967-1970 contract, nor does it appear from the face of the

---

[27]At pp. 18-19 of its Petition, Local 70 also argues that the lower courts' equating failure to agree with impasse violated three "settled principles":

> (1) It implied a no-strike pledge where none existed; (2) It interfered with the parties' ability to resolve bargaining position [sic] through forces of economic contention; and (3) [It] misread the meaning of "impasse", which is decidedly different from a failure to agree.

Id. at 19. These arguments are spurious. The first "principle" begs the question: the very issue is whether a no-strike pledge existed. The second is circular: if a no-strike pledge existed then the parties themselves agreed to limit their economic warfare and the courts simply effectuated that agreement. The third is not a principle at all; whether "impasse" means the same as "fail to agree" in a collective bargaining agreement is a question of fact peculiar to the individual case which the courts below resolved against Local 70 on the factual record.

[28]*See id.* at 13.

[29]*Id.* at 19.

document that it construes the "fail to agree" language at issue here. Moreover, by its own terms the grievance decision is limited to the facts of the case it decides. Pet. App. H at 3. Accordingly, the document creates no "special and important reasons" for certiorari.

C. The Courts Below Assessed Only Damages that Were Proximately and Foreseeably Caused by Local 70's Strike.

Local 70's final proffered ground for certiorari is its allegation that the lower courts erred in assessing damages based on the refusal of certain employees to cross Local 70's picket lines even though those employees were not members of Local 70 and the picketing, in some instances, occurred at various of the Employers' facilities outside of Local 70's normal geographical jurisdiction. Petition at 20-21. Local 70 denies responsibility for work stoppages that constitute "sympathy strikes" and characterizes the lower courts' disagreement with Local 70's position as an example of inconsistent judicial treatment of damages in sympathy strikes. Local 70 concludes that, "[a]bsent a 'clear and unmistakable' contractual waiver of a union's right to cause work stoppages outside of its jurisdiction, the Union's actions in picketing other facilities cannot cause liability under [29 U.S.C.] section 185." *Id.* at 20.

The Ninth Circuit Court of Appeals correctly disposed of this argument on the observation that the Employers had sued on the basis of the conduct of Local 70, not that of the sympathy strikers. Pet. App. A at 48-53. Local 70's members, who were picketing in furtherance of their strike in violation of the 1967-1970 contract, foreseeably and proximately caused the work stoppages of the employees who would not cross the picket lines. Local 70 had control of the picket lines and could have pulled them at any time with the result that the work stoppages of the sympathy strikers would have ceased. But for Local 70's strike, the work stoppages would not have occurred.

This is the crucial distinction between this case and the authorities Local 70 cites. *See* Petition at 20. *NLRB v. Southern California Edison Co.*, 646 F.2d 1352, 1365 (9th Cir. 1981), and *Delaware Coca-Cola Bottling Co. v. General Teamster Local Union 326*, 624 F.2d 1182, 1184 (3d Cir. 1980), uphold the right of *sympathy strikers themselves* to engage in a sympathy strike absent a "clear and unmistakable" waiver in their collective bargaining agreement. But the contractual obligations of the sympathy strikers are not at issue here; it was the conduct of Local 70, which caused the sympathy strike, that was on trial below. Once the breach was established, Local 70 was liable for all foreseeably and proximately caused damages.

Local 70's reliance on *Eazor Express, Inc. v. International Brotherhood of Teamsters*, 520 F.2d 951 (3d Cir. 1975), *cert. denied*, 424 U.S. 935 (1976), is equally misplaced, as the Court of Appeals explained. *Eazor* involved a wildcat strike by members of one union outside of that union's jurisdiction which precipitated a wildcat strike by members of another union. The court exonerated the first union from liability for the work stoppages of the second union's members because it held the first union had no control over the work stoppages of the second union's members and "was not in a position to take effective measures to get them back to work". *Id.* at 965. In the instant case, in contrast, it is not disputed that the sympathy strikers' work stoppage was a function of Local 70's picket lines, over which Local 70 had complete control.[30]

No "special and important" reasons for certiorari are presented by the Court of Appeals' conclusion that the District Court was not clearly erroneous in finding that Local 70's strike in violation of the contract foreseeably and proximately caused the Employers damages by inducing other

---

[30]At p. 20 n.32 of its Petition, Local 70 states that it "does not challenge that it was responsible for the May strike. . . ."

employees not to work. Such a straightforward determination of causation does not merit review by this Court.

CONCLUSION

Local 70 has failed to state any "special and important reasons" for certiorari. Local 70's repudiation of the collective bargaining agreement waived any rights it might have had to demand arbitration of the Employers' claims, so the courts below were correct to reach the merits and interpret the contract. The lower courts quite properly resolved the factual questions of breach and damages. Local 70 simply ignores the fact that this case is a straightforward action for breach of a collective bargaining agreement in which the District Court's findings were not clearly erroneous and the law was correctly applied. The only thing that stands out as unreasonable is Local 70's tenaciously inconsistent defense. Accordingly, we request that this Court deny Local 70's Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Dated: September 29, 1982.

Respectfully submitted,

GEORGE J. TICHY, II, ESQ.
Counsel of Record
RICHARD H. HARDING, ESQ.
MICHAEL B. MARGOLIS, ESQ.
LITTLER, MENDELSON, FASTIFF
& TICHY
A Professional Corporation
Attorneys for Respondents.

APPENDIX

Respondents' Disclosure of Corporate Parents, Non-Wholly Owned Subsidiaries, and Affiliates Pursuant to United States Supreme Court Rule 28.1.

Pursuant to this Court's Rule 28.1, each corporate Respondent makes the following disclosures about its corporate parents, non-wholly owned subsidiaries, and affiliates:

ALLTRANS EXPRESS USA, INC.
Parent: Alltrans Holding
Subsidiaries/Affiliates: Alltrans Road Fast

CALIFORNIA MOTOR EXPRESS, A Division of California Motor Transport
Parent: Delta Lines, Inc./DCI Carriers
Subsidiaries/Affiliates: None

CONSOLIDATED FREIGHTWAYS
Parent: Consolidated Freightways, Inc.
Subsidiaries/Affiliates: None

CRESCENT TRUCK LINES
Parent: None
Subsidiaries/Affiliates: San Ramon Boat Works

DELTA LINES, INC.
Parent: DCI Carriers/Delta California Industries
Subsidiaries/Affiliates: None

DI SALVO TRUCKING COMPANY
Parent: RWL Investments, Inc.
Subsidiaries/Affiliates: None

EAST TEXAS MOTOR FREIGHT SYSTEM
Parent: Arkansas Best Corp.
Subsidiaries/Affiliates: None

GARRETT FREIGHTLINES, INC.
Parent: ANR Freight System/American Natural Resources
Subsidiaries/Affiliates: None

GRANNY GOOSE FOODS, INC.
Parent: G.F. Industries
Subsidiaries/Affiliates: California Pretzels Co., Inc.

IML FREIGHT, INC.
Parent: A & W Investments
Subsidiaries/Affiliates: None

LEE WAY MOTOR FREIGHT, INC.
Parent: PepsiCo, Inc.
Subsidiaries/Affiliates: None

MORRIS DRAYING CO.
Parent: None
Subsidiaries/Affiliates: Dramore Co.

NAVAJO FREIGHT LINES, INC.
Parent: Arkansas Best Corp.
Subsidiaries/Affiliates: None

O.N.C. FREIGHT SYSTEM
Parent: Rocor International
Subsidiaries/Affiliates: None

PACIFIC INTERMOUNTAIN EXPRESS CO.
Parent: I.U. Transportation Services, Inc.
Subsidiaries/Affiliates: None

PACIFIC MOTOR TRUCKING COMPANY
Parent: SP Transportation/Southern Pacific
Subsidiaries/Affiliates: None

SUNSHINE BISCUIT, INC.
Parent: American Brands, Inc.
Subsidiaries/Affiliates: Bell Brand Foods; Humpty Dumpty Foods, Ltd.

TRANSCON LINES
Parent: Transcon, Inc.
Subsidiaries/Affiliates: None

WESTERN GILLETTE, INC./ROADWAY EXPRESS, INC.
Parent: Roadway Services, Inc.
Subsidiaries/Affiliates: Roadway Express, Inc., Nevada; Roadway Express, Inc., Arizona

WILLIG FREIGHT LINES
Parent: Transport Holdings, Inc./TDG, USA, Inc.
Subsidiaries/Affiliates: None

Each of the following Respondents has no corporate parents, non-wholly owned subsidiaries, or affiliates:

ASSOCIATED FREIGHT LINES
CALIFORNIA TRUCKING ASSOCIATION
COAST DRAYAGE
FRANK'S TRUCKING
HASLETT CO.
LODI TRUCK SERVICE
STERLING TRANSIT CO., INC.
SYSTEM 99
T.I.M.E-DC, INC.
YELLOW FREIGHT SYSTEM